Michael J. O'Neill *Legislative Service Commission*

Am. S.B. 40

124th General Assembly
(As Passed by the Senate)

Sens. Jordan, Jacobson, Fingerhut, Randy Gardner, Harris, Spada, Hagan, White, Mumper, Amstutz, Espy, Nein, Robert Gardner

BILL SUMMARY

- Includes in the specified types of activities that may constitute the "pattern of conduct" required to commit the offense of menacing by stalking actions or incidents that prevent, obstruct, or delay the performance by an emergency facility person of any authorized act within the person's official capacity.

- Expands the offense of disrupting public services to additionally prohibit a person, purposely by any means or knowingly by damaging or tampering with any property, from substantially impairing the ability of emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

- Specifies that the offense of disorderly conduct is a misdemeanor of the fourth degree if the offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility.

- Expands the offense of misconduct at an emergency to also prohibit a person from knowingly hampering the lawful operations of any emergency facility person engaged in the person's duties in an emergency facility.

- Defines "emergency facility personnel" for purposes of these provisions.

CONTENT AND OPERATION

Menacing by stalking

Existing law

Existing law prohibits a person, by engaging in a "pattern of conduct" (see below), from knowingly causing another to believe that the offender will cause "physical harm" to the other person or cause "mental distress" (see "***Definitions***," below) to the other person. A person who violates this prohibition is guilty of menacing by stalking. Generally, menacing by stalking is a misdemeanor of the first degree. But menacing by stalking is a felony of the fourth degree if any of the following applies:

(1) The offender previously has been convicted of menacing by stalking or aggravated trespass.

(2) In committing the offense, the offender made a threat of physical harm to or against the victim.

(3) In committing the offense, the offender trespassed on the land or premises where the victim lives, is employed, or attends school.

(4) The victim of the offense is a minor.

(5) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(6) While committing the offense, the offender had a deadly weapon on or about the offender's person or under the offender's control.

(7) At the time of the commission of the offense, the offender was the subject of an anti-stalking temporary protection order or anti-stalking civil protection order, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(8) In committing the offense, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises.

(9) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

As used in the offense, "pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct, or delay the performance by a "public official" (see "***Definitions***," below), firefighter, rescuer, or emergency medical services person of any authorized act within the person's official capacity may constitute a "pattern of conduct." (R.C. 2903.211.)

Operation of the bill

The bill expands the definition of "pattern of conduct" used in the offense of menacing by stalking. Under the bill, in addition to the types of actions or incidents that currently are specified as possibly constituting a "pattern of conduct," actions or incidents that prevent, obstruct, or delay the performance by an "emergency facility person" (see "***Definitions***," below) of any authorized act within the person's official capacity also may constitute a "pattern of conduct." (R.C. 2903.211(D).)

Disrupting public services

Existing law

Existing law prohibits a person, purposely by any means or knowingly by damaging or tampering with any property, from doing any of the following:

(1) Interrupting or impairing television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;

(2) Interrupting or impairing public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public;

(3) Substantially impairing the ability of law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel to respond to an emergency or to protect and preserve any person or property from "serious physical harm" (see "***Definitions***," below).

A person who violates any of these prohibitions is guilty of disrupting public services, a felony of the fourth degree. (R.C. 2909.04.)

Operation of the bill

The bill expands the third prohibition above to additionally prohibit a person, purposely by any means or knowingly by damaging or tampering with any property, from substantially impairing the ability of emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm (R.C. 2909.04(A)(3)).

Disorderly conduct

Existing law

Under existing law, the offense of disorderly conduct contains two prohibitions. The first prohibition prohibits a person from recklessly causing inconvenience, annoyance, or alarm to another by doing any of the following (R.C. 2917.11(A)): (1) engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior, (2) making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person, (3) insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response, (4) hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender, or (5) creating a condition that is physically offensive to persons or that presents a "risk of physical harm to persons or property" (see "***Definitions***," below), by any act that serves no lawful and reasonable purpose of the offender.

The second prohibition prohibits a person, while voluntarily intoxicated, from doing either of the following: (1) in a public place or in the presence of two or more persons, engaging in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others, or (2) engaging in conduct or creating a condition that presents a risk of physical harm to the offender or another, or to the property of another. Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft, or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of this second prohibition. If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of this second prohibition. (R.C. 2917.11(B), (C), and (D).)

A person who violates either prohibition is guilty of disorderly conduct. Generally, disorderly conduct is a minor misdemeanor. But disorderly conduct is a misdemeanor of the fourth degree if any of the following applies: (1) the

offender persists in disorderly conduct after reasonable warning or request to desist, (2) the offense is "committed in the vicinity of a school" or in a "school safety zone" (see "***Definitions***," below) or (3) the offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind. (R.C. 2917.11(E).)

Operation of the bill

The bill expands the circumstances in which disorderly conduct is a misdemeanor of the fourth degree. Under the bill, the offense also is a misdemeanor of the fourth degree if the offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an "emergency facility" (see "***Definitions***," below) (R.C. 2917.11(E)(3)(d)).

Misconduct at an emergency

Existing law

Existing law prohibits a person from knowingly doing any of the following (R.C. 2917.13(A)):

(1) Hampering the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person, engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;

(2) Failing to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.

Nothing in these prohibitions may be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative's duties.

A person who violates any of the above prohibitions is guilty of misconduct at an emergency. Generally, misconduct at an emergency is a minor misdemeanor. If the violation creates a risk of physical harm to persons or property, misconduct at an emergency is a misdemeanor of the first degree. (R.C. 2917.13.)

Operation of the bill

The bill expands the offense of misconduct at an emergency to also prohibit a person from knowingly hampering the lawful activities of any emergency

facility person who is engaged in the person's duties in an emergency facility (R.C. 2917.13(A)(2)).

Definitions

The following definitions apply to the bill:

Committed in the vicinity of a school

An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises. (R.C. 2917.11(F), by reference to R.C. 2925.01(P)--not in the bill.)

Emergency facility (enacted in the bill)

"Emergency facility" means a "hospital" (see below) emergency department or any other facility that provides emergency medical services (R.C. 2909.04(C)(3) and R.C. 2917.11(F)(3) and 2917.13(D)(3)).

Emergency facility personnel and emergency facility person (enacted in the bill)

"Emergency facility personnel" means any of the following: (1) any of the following individuals who perform services in the ordinary course of their professions in an emergency facility: physicians authorized to practice medicine and surgery or osteopathic medicine and surgery, registered nurses and licensed practical nurses, physician assistants, "health care workers" (see below), and clerical staffs, (2) any individual who is a security officer performing security services in an emergency facility, and (3) any individual who is present in an emergency facility, who was summoned to the facility by an individual identified in clause (1) or (2), and who is directed while in the facility by an individual identified in either of those clauses.

"Emergency facility person" is the singular of "emergency facility personnel." (R.C. 2909.04(C)(2) and R.C. 2903.211(D)(4), 2917.11(F)(2), and 2917.13(D)(2).)

Emergency medical services personnel

"Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, or other emergency services personnel acting within the ordinary course of their profession (R.C. 2903.211(D),

2909.04(C), 2917.11(F), and 2917.13(D), by reference to R.C. 2133.21(F)--not in the bill).

Health care worker (enacted in the bill)

"Health care worker" means an individual, other than an individual who is non-clerical emergency facility personnel, who provides medical or other health-related care or treatment in an emergency facility, including medical technicians, medical assistants, orderlies, aides, or individuals acting in similar capacities (R.C. 2909.04(C)(5)).

Hospital

"Hospital" means an institution classified as a hospital under the Department of Health Law in which are provided to inpatients diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care for a continuous period longer than 24 hours or a hospital operated by a health maintenance organization.

"Hospital" does not include a facility licensed under the Rest Home and Nursing Home Law, a health care facility operated by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities, a health maintenance organization that does not operate a hospital, the office of any private licensed health care professional, whether organized for individual or group practice, or a clinic that provides ambulatory patient services and where patients are not regularly admitted as inpatients. "Hospital" also does not include an institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation under section 501 of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and providing 24-hour nursing care pursuant to the exemption from the licensing requirements of the Nursing Law. (R.C. 2909.04(C)(4), by reference to R.C. 3727.01--not in the bill.)

Mental distress

"Mental distress" means any mental illness or condition that involves some temporary substantial incapacity or mental illness or condition that would normally require psychiatric treatment (R.C. 2903.211(D)(2)).

Physical harm to persons

"Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration (R.C. 2901.01(A)(3)--not in the bill).

Physical harm to property

"Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use (R.C. 2901.01(A)(4)--not in the bill).

Public official

"Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers (R.C. 2903.211(D), by reference to R.C. 2921.01--not in the bill).

Risk

"Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist (R.C. 2901.01(A)(7)--not in the bill).[1]

School

"School" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed (R.C. 2901.01(C)(2) and 2925.01(Q)--not in the bill).

School activity

"School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district, a governing board of an educational service center, or the governing body of a school for which the State Board of Education prescribes minimum standards (R.C. 2901.01(C)(3)--not in the bill).

School building

"School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or

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[1] *By contrast, "substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist (R.C. 2901.01(A)(8)--not in the bill).*

not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed (R.C. 2901.01(C)(2) and 2925.01(S)--not in the bill).

School bus

"School bus" means every bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function. But "school bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous to such municipal corporation, nor a common passenger carrier certified by the public utilities commission unless the bus is devoted exclusively to the transportation of children to and from a school session or a school function. "School bus" also does not include a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than 15 children in the van or bus at any time. (R.C. 2901.01(C)(4) and 4511.01(F)--not in the bill.)

School premises

"School premises" means either of the following (R.C. 2901.01(C)(2) and 2925.01(R)--not in the bill): (1) the parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed, (2) any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

School safety zone

"School safety zone" consists of a "school," "school building," "school premises," "school activity," and "school bus" (see above) (R.C. 2901.01(C)(1)--not in the bill).

Serious physical harm to persons

"Serious physical harm to persons" means any of the following (R.C. 2901.01(A)(5)--not in the bill): (1) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (2) any physical harm that carries a substantial risk of death, (3) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (4) any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement, or (5) any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

Serious physical harm to property

"Serious physical harm to property" means any physical harm to property that does either of the following (R.C. 2901.01(A)(6)--not in the bill): (1) results in substantial loss to the value of the property, or requires a substantial amount of time, effort, or money to repair or replace, or (2) temporarily prevents the use or enjoyment of the property, or substantially interferes with its use or enjoyment for an extended period of time.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	02-13-01	p.	130
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